

### **REMARKS/ARGUMENTS**

In the specification, the paragraphs [0001] and [0003] have been amended for clarification. Claims 1-52 remain in this application. Claims 1-52 were rejected by the Examiner in the Office Action mailed May 18, 2004. Claims 1, 26, and 34 are amended herein.

Independent Claim 1 has been amended to include (added words underlined for emphasis) “communicating a cue signal to activate a countermeasure system having a countermeasure on a platform separate from said one or more surveillance systems”. Support for the amendment to Claim 1 is found in the specification as filed in at least paragraphs [0019]-[0021] and FIGs. 1-2. Independent Claim 26 has been amended to include (added words underlined for emphasis) communicating a cue signal to activate a countermeasure system on a platform separate from said one or more sensors, wherein said countermeasure system deploys a countermeasure in response to said cue signal. Support for the amendment to Claim 26 is found in the specification as filed in at least paragraphs [0020], [0048]-[0050], and [0066], as well as FIGs. 3-5. Independent Claim 34 has been amended to include (added words underlined for emphasis) a surveillance system operable to detect one of more signals and to send a cue signal; and a countermeasure system on a platform separate from said surveillance system operable to receive said cue signal from said surveillance system and to activate one or more countermeasures in response to said cue signal. Support for the amendment to Claim 34 is found in the specification as filed in at least paragraphs [0019]-[0021] and FIGs. 1-2. No new matter has been added.

### **Claim Rejections – 35 U.S.C. § 102**

#### **A. Claims 1-8, 13, 22-28, 34-41, and 46-52**

The Examiner rejected Claims 1-8, 13, 22-28, 34-41, and 46-52 under 34 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 6,369,885 to Brown et al. Applicant respectfully traverses the rejection of these claims under 35 U.S.C. 102(b) and requests reconsideration for the following reasons.

According to the Federal Circuit, “[a] single prior art reference anticipates a patent claim if it expressly or inherently describes each and every limitation set forth in the patent claim.” Trintec Industries, Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 1295, 63 USPQ2d 1597 (2002). Further, according to the Federal Circuit, it is not sufficient that each element be found somewhere in the reference, the elements must be “arranged as in the claim”. Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co., 730 F.2d 1452, 1458, 221 USPQ 481, 485 (1984). The Brown et al. reference does not expressly or inherently describe every limitation of amended independent Claims 1, 26, and 34.

Brown et al. discloses closed-loop infrared countermeasure system that includes a missile warning system that generates a handoff signal that includes information such as amplitude, how long the threat has been tracked, speed, intensity, and angle range from the platform. Col. 3, lines 51-67 and Col. 4, lines 7-16. The goal of Brown et al is to provide a system that is employed on a particular platform to divert an incoming missile from striking the platform. See col. 3, lines 54-60. As pointed out by the present specification as filed, such autonomous infrared counter measure systems are expensive and complex when mounted on a particular platform, e.g., an aircraft, as fully independent aircraft defense systems. See paragraph [0002]. Brown et al does not disclose communicating a cue signal to activate a countermeasure system having a countermeasure on a platform separate from said one or more surveillance systems. Thus, Brown et al. does not teach or suggest every limitation of the invention as claimed in Claims 1 and 34, and the Examiner’s rejection under 35 U.S.C. 102 should be withdrawn.

Without acceding the propriety of the respective rejections, Claims 2-7, 13, and 22-5 are patentable at least because of their dependency from allowable Claim 1. Without acceding to the propriety of the respective rejections, Claims 35-41 and 46-52 are patentable at least because of their dependency from allowable Claim 34.

Regarding the rejection of Claim 26 as being anticipated by Brown et al., Applicant furthermore takes exception to and traverses the Examiner’s assertion that “in as much as the

system (10) of Brown et al. includes a processor (30), it is inherent that the processor includes computer readable instructions that anticipate the steps of claim 26.” According to the Federal Circuit, “anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation.” See Transclean Corp. v. Bridgewood Services, Inc., 290 F.3d 1364, 1374, 62 USPQ2d 1865 (2002). At least because of the differences noted above for Claims 1 and 34, the “processor” of Brown et al. cannot inherently anticipate the computer readable instructions of Claim 26. Thus, the rejection of Claim 26 is improper and should be withdrawn.

Without acceding to the propriety of the respective rejections, Claims 27-28 are patentable for at least their dependency on allowable Claim 26.

B. Claims 1-5, 22, 26, 27 and 34

The Examiner rejected Claims 1-5, 22, 26, 27 and 34 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 6,410,897 to O’Neill. Applicant respectfully traverses the rejection of these claims under 35 U.S.C. 102(b) and requests reconsideration for the following reasons.

As noted above, in order for a rejection under 35 U.S.C. § 102(b) to be proper, the reference must expressly or inherently describe each and every limitation of the claim(s) in question. O’Neill does not expressly or inherently describe each and every limitation of Claims 1-5, 22, 26, 27 and 34 as amended. O’Neill discloses “a method and apparatus for self-protection of aircraft against missile threats” that “integrates a search, detection, and identification unit, combined with a directional countermeasure device.” [Emphasis added] Col. 1, lines 41-42. O’Neill discloses “a method for protecting an aircraft that uses a self-protection system mounted on a controllable gimbal.” Col. 2, lines 18-19. The O’Neill self-protection system includes “a lens/detector unit having a wide-angle lens system, a narrow-angle lens system, a two-color separator that selectively receives scene energy from the wide-angle lens system or the narrow-angle lens system, and a two-color infrared detector that receives the scene energy in two colors from the two-color separator.” Col. 2, lines 20-25. The O’Neill method

further includes “the step of searching for a target using the lens/detector unit by the repeated steps of viewing a viewed portion of a scene through the wide-angle lens system using the infrared detector in a staring mode, analyzing the viewed portion of the scene for the presence of a potential target, and if no potential target is found, stepping the gimbal to a new portion of the scene, and thereafter repeating the steps of viewing, analyzing, and stepping until the potential target is located at a target location in the step of analyzing.” Col. 2, lines 28-37. Thus, O’Neill clearly does not disclose a method or system as claimed in amended Claim 1 and Claim 34, respectively.

Regarding the rejection of Claim 26 as being anticipated by O’Neill, Applicant furthermore takes exception to and traverses the Examiner’s assertion that “in as much as the system (20) of Brown et al. [sic] [O’Neill et al.] includes a processor (70), it is inherent that the processor includes computer readable instructions that anticipate the steps of claim 26.” According to the Federal Circuit, “anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation.” See Transclean Corp. v. Bridgewood Services, Inc., 290 F.3d 1364, 1374, 62 USPQ2d 1865 (2002). At least because of the differences noted above for Claims 1 and 34, the “processor” of O’Neill et al. cannot inherently anticipate the computer readable instructions of Claim 26. Thus, this rejection is improper and should be withdrawn.

### **Claim Rejections – 35 U.S.C § 103**

#### **C. Claims 9-12 and 14-18**

The Examiner rejected Claims 9-12 and 14-18 under 35 U.S.C. § 103(a) as being unpatentable over Brown et al. in view of U.S. Pat. No. 6,192,134 to White et al. Because Claims 9-12 and 14-18 depend from amended Claim 1, they are patentable for at least the same reasons as described above for amended Claim 1. The rejection of Claims 9-12 and 14-18 should therefore be withdrawn.

D. Claims 19-21

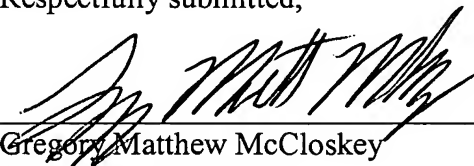
The Examiner rejected Claims 19-21 under 35 U.S.C. 103(a) as being unpatentable over Brown et al. in view of U.S. Pat. No. 6,178,141 to Duckworth et al. Because Claims 19-21 depend from amended Claim 1, they are patentable for at least the same reason(s) as Claim 1. The rejection of Claims 9-12 and 14-18 should therefore be withdrawn.

**Summary and Conclusions**

Based on the foregoing arguments, it is respectfully submitted that Claims 1-51 now pending in this application are in condition for allowance, and such allowance is respectfully requested. If prosecution of the application can be expedited by a telephone conference, the Examiner is invited to call the undersigned at the number given below. No further fees are believed due. However, if there are any fees due, the Commissioner is hereby authorized to charge the appropriate amount to Deposit Account No. 200675. A copy of this page is included for deposit account purposes.

Respectfully submitted,

Date: August 18, 2004

  
\_\_\_\_\_  
Gregory Matthew McCloskey  
Attorney for Applicant  
Registration No. 47,025  
201 Lowell Street,  
Wilmington, MA 01887  
(978) 657-1207